



Signed and Filed: November 04, 2011

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
JITENDRA M. VORA,) No. 10-30889DM
Debtor.) Chapter 11

MEMORANDUM DECISION REGARDING COUNSEL'S FEE APPLICATION

On October 14, 2011, the court held a hearing on the Application for Final Compensation (the "Fee Application") of Oxana Kozlov, Esq. ("Kozlov") for services rendered as counsel to the chapter 11 debtor-in-possession Jitendra Vora ("Debtor"). Kozlov sought allowance of fees in the amount of \$36,312.50; she holds a retainer in the amount of \$20,000 (leaving a balance of \$16,312.50 to be paid by Debtor).

While no party filed a written opposition to the fee application, Debtor appeared at the hearing and contended that Kozlov had agreed to accept \$10,000 as compensation in full. The record, however, reflects that Debtor paid the \$20,000 retainer, and neither the employment application signed by Debtor nor the retention agreement signed by Debtor contains a ceiling on fees to be charged. See Docket No. 30 and Docket No. 31-1. Debtor's response to Question 9 in his Statement of Financial Affairs

1 reflects that he paid \$20,000 to Kozlov. Therefore, despite
2 Debtor's contention that the fees charged exceed those which he
3 agreed to pay and Kozlov agreed to accept (i.e., \$10,000), the
4 documents in the record reflect otherwise. The court therefore
5 overrules this objection.

6 Even absent any opposition, the court has an independent duty
7 to review fees charged by professionals employed by the estate.
8 In re Maruko Inc., 160 B.R. 633 (Bankr. S.D. Cal. 1993).

9 Here, the court believes that the billing rates charged by Kozlov
10 and her paralegal, Alexander Volkov ("Volkov"), are well within
11 the range of reasonable. Moreover, the court has no issue with
12 the quality of Kozlov's work and the results achieved in this
13 case: working out agreements with the creditors in two impaired
14 classes and confirming a plan that paid unsecured creditors in
15 full.

16 That said, the court is reducing Kozlov's fees by \$3,000
17 because many of the tasks performed by Volkov were non-legal in
18 nature and did not require assistance of counsel. As such, they
19 were not "necessary" services that were compensable. 11 U.S.C. §
20 330(a)(1)(A); In re Garcia, 335 B.R. 717 (9th Cir. BAP 2005)
21 (affirming denial of attorney fees for assisting trustee in sale
22 of property; the fees were not "compensable as legal services").

23 For example, on March 17, 2010, Volkov charged fees for
24 driving Debtor to different banks and assisting him in closing
25 personal accounts and opening debtor-in-possession accounts. On
26 June 24, 2010, he "obtained a competitive [insurance] agent,
27 connected agent and client." On July 30, 2010, he met with Debtor
28 "to gather all needed information about vacant units, made

1 pictures [and went to bank] to obtain monthly statements." In
2 July and August, he charged time for preparing, posting,
3 correcting, and eventually removing online advertisements
4 regarding the vacant units. He met with Debtor regarding
5 responses and feedback on "the ads, potential renters filling up
6 applications, answered technical/general questions regarding
7 needed cleanup and repairs on the property." In the same months,
8 he drafted an advertisement seeking employment for Debtor's wife,
9 and communicated with her about the responses.

10 Throughout the case, he "facilitated transfer and delivery"
11 of documents to and from Debtor, services which are essentially
12 those of a courier and can be performed for less than \$125 an
13 hour. While all of these services were undoubtedly helpful to
14 Debtor and contributed to the general administration of the
15 estate, they were not legal services for which the court approved
16 Kozlov's employment. The charges for these fees equal
17 approximately \$2,000.

18 In addition, Volkov drafted all of the monthly operating
19 reports (seventeen, using simpler forms promulgated by the United
20 States Trustee's office for small real estate/individual cases) in
21 this case, charging approximately \$5,300 for this work (obtaining
22 financial data from Debtor and drafting the reports), with Kozlov
23 charging another \$2,177 for "attending to preparation and filing"
24 of the reports. In general, Debtors or their financial
25 professional should prepare such reports, with counsel reviewing
26 and filing them. In re Koerkenmeier, 344 B.R. 603 (Bankr. W.D.
27 Mo. 2006) (reducing by half fees charged by attorney and assistant
28 for preparation of monthly operating reports as "[t]hose reports

1 should be prepared by the client (or a financial professional)
2 with final review by counsel.").

3 Because Debtor is paying unsecured creditors in full,
4 allowance of Kozlov's fees will not affect them directly.
5 Moreover, many of the services described here did benefit Debtor,
6 and he is the one who is responsible for payment of the
7 administrative expenses. Therefore, the court is reducing the
8 fees by only \$3,000, and will allow the balance of the requested
9 fees.

10 That said, Debtor's amended disclosure statement and amended
11 plan did not provide an estimate of unpaid administrative costs.
12 Such costs were not included in the budget of income and expenses
13 attached to the disclosure statement. Therefore, while the court
14 will allow \$33,312.50 in compensation and will authorize Kozlov to
15 apply the \$20,000 retainer against the allowed fees, it will not
16 authorize payment of the \$13,312.50 balance until it is satisfied
17 that payment will not affect Debtor's ability to perform his
18 obligations under the plan. To that end, the court directs Kozlov
19 to confer with Debtor and file, no later than November 18, 2011,
20 either an agreed payment plan (or in the absence of an agreement,
21 her own proposed schedule of payment (i.e., lump sum or
22 installments, etc.) and an explanation of how that proposed
23 payment will or will not affect plan performance. If Debtor
24 disagrees with the proposed payment, he should file an opposition
25 no later than November 30, 2011.

26 Kozlov should upload an order allowing fees in the amount of
27 \$33,312.50 and authorizing application of the \$20,000 against the
28 allowed fees. The order should reflect that payment of the

1 balance (\$13,312.50) is deferred pending further order of the
2 court.

3 **END OF MEMORANDUM DECISION**
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COURT SERVICE LIST

Jitendra M. Vora
1435 Waller Str. # 3
San Francisco, CA 94117